IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 948 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G M TANK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 948 of 1983

MR VB PATEL, SR. COUNSEL WITH

MR DG CHAUHAN for Petitioner No. 1

MR. A.D. OZA, G.P. with MS. SHRADDHA TRIVEDI,

AGP, for Respondents No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/01/2002

C.A.V. JUDGEMENT

1. G.M. Tank-petitioner has filed this petition before this court praying for a writ of mandamus or

certiorari or any other appropriate writ, order or direction quashing and setting aside the order dated 21.10.1982 passed by the Executive Engineer by which he has dismissed the petitioner from service from 15.10.1982. The petitioner further prayed that the respondent may be directed to treat the petitioner in continuous service and also direct the respondents to pay full salary and other allowances etc. The said petition was filed somewhere in the year 1983 and this court was pleased to admit the same and notices have been served on the respondent and now the matter has been placed for final hearing before me.

2. The facts giving rise to this petition are as under:

2.1 The petitioner joined service of the State of Gujarat in the year 1953 as Overseer. In 1955 the petitioner was promoted as Assistant Engineer and in 1965 he was promoted as Executive Engineer. Thus on that day the petitioner had put in 26 years service. According to the petitioner, he was working as Executive Engineer efficiently, diligently.

2.2 It has been stated in the petition that there was confidential enquiry against the petitioner in May, 1977 regarding the petitioner's income and the petitioner was called upon by the Inspector, Corruption Department to furnish statements of his income and properties. The petitioner submitted all particulars of his income and properties itemwise to the Investigation Officer who submitted his report to the Government. Thereafter nothing happened. The petitioner has reason to believe that the chapter was closed.

2.3 It has been stated in the petition that thereafter the petitioner has received charge-sheet dated 20.2.1979. In the charge-sheet the respondents alleged that the petitioner has illegally accumulated the excess income by way of gratification. The charge is reproduced as under:

> "The petitioner's income from salary, interest, rent and LIC policy amount comes to Rs. 2,75,328/- from April, 1953 to December, 1977, against that the petitioner has possessed property worth Rs. 5,29,509.14. Therefore the allegation is that Rs. 2,54,180/- are excess by way of illegal gratification. Therefore the petitioner violated Rules 3.1 of the Gujarat Civil Services Conduct Rules, 1971."

2.4 Thereafter the petitioner has replied to the said charge by his explanation dated 15.5.1979. The petitioner in his explanation denied all allegations as well as calculations made therein. The petitioner clarified and explained his income in this behalf.

2.5 Thereafter the Government appointed one Mr. V.B. Raval as Enquiry Officer on 30.6.1979. One Mr. S.B. Bhuj, Police Inspector, was appointed as the Presenting Officer. In the inquiry proceedings some of the witnesses were examined by the department on 12.9.1979, namely, relatives of the petitioner. It has been stated by the petitioner that Smt. Nirmalaben Govindbhai Tank, the wife of the petitioner, Shri Meghjibhai Karsandas Kamlia, father-in-law of the petitioner, Shri Harishbhai Meghjibhai Kamlia, brother-in-law of the petitioner, Shri Jayantibhai Madhavjibhai Tank, the brother of the petitioner and Shri Anilkumar Meghjibhai Kamlia were examined. Thereafter, the Inquiry Officer submitted his report at the end of the enquiry. The Inquiry Officer has held that the petitioner had property and income disproportionate to the known sources of income which shows that the petitioner has received illegal gratification and the charge against the petitioner about illegal possession was proved.

2.6 Thereafter, the Deputy Secretary, Irrigation Department issued a show cause notice dated 4.6.1980 to the petitioner to show cause against the proposed dismissal. The petitioner replied to the show cause notice by his letter dated 27.9. 1980. The said show cause notice and report of the Inquiry Officer are placed on record of the case. Thereafter, the Government ordered petitioner's dismissal from service with immediate effect by resolution dated 15.10.1982 which was communicated by the letter/order dated 22.10.1982. The order has been produced on the record.

2.7 Being aggrieved and dissatisfied with the said order the petitioner has filed this petition before this court.

2.8 Mr. V.B. Patel, learned senior counsel with Mr. D.G. Chauhan for the petitioner submitted that the aforesaid order has been passed at the instance of one Mr. M.D. Patel, Secretary, Irrigation Department who has bias and prejudice against the petitioner.

2.9 He has further submitted that the Inquiry Officer has arbitrarily concluded and arrived at the conclusion

by unreasonable and irrational mind. The findings of the Inquiry Officer is without any evidence whatsoever and totally perverse.

2.10 The learned counsel for the petitioner further submitted that the Inquiry Officer ignoring the correct facts deposed by the witnesses, reached a strange conclusion without any rational reason or tangible and credible material on record. No evidence either orally or documentary, was led by the Department. Charges were not proved. The Inquiry Officer submitted his report (see: Annexure-C pages 42 to 75). Findings were recorded in favour of the petitioner. However, contrary to the findings and without an iota of evidence against the petitioner, find the petitioner guilty for the alleged charges.

2.11 He further submitted that there is no warrant for any action against the petitioner and all the proceedings are contrary to the principles of natural justice and null and void. In any event, the order of dismissal is passed without any material and basis and is passed without application of mind and arbitrarily on suspicion only. He further submitted that the findings of the Enquiry Officer and the impugned order of dismissal suffers from error apparent on the face of the record. He submitted that the order is manifestly illegal as the same is based without any evidence merely on irrational conjectures. He submitted that the conclusion is incompatible with his observations made therein and it is ex-facie irrational, arbitrary and perverse. He submitted that no reasonable man can arrive at such a conclusion in the face of the findings referred in this behalf.

2.12 He further submitted that the reasons for holding charge proved are also irrational and the findings are against cogent and reliable evidence supported by unimpeachable documentary evidence. He submitted that the approach of the Enquiry Officer and the Government is laconic and displayed total want of application of mind. He further submitted that this is a case of no evidence and therefore this court must entertain the present petition under Article 226/227 of the Constitution of India.

2.12A The affidavit filed by the respondent is also vague and does not disclose that the petitioner has illegally accumulated the excess income by way of gratification as alleged. The judgements cited by the learned counsel for the respondent have no application in

the facts and circumstances of the case.

2.12B In view of the above facts and submission, the learned counsel for the petitioner submitted that this petition may be allowed and set aside the dismissal order dated 22.10.1982 at Annexure-E and direct the respondents to treat the petitioner continue in service from 22.10.1982 as if his services have not been terminated and direct the respondents to pay full salary, all consequential benefits, including promotion and other allowances, from 22.10.1982 as if the services of the petitioner have not been terminated till the date of superannuation. The said benefits be given with 18% interest and the cost of this petition. The respondents be directed to fix pension etc.

2.13 The learned counsel for the petitioner has also relied on the Notification dated 10.8.1971 issued by General Administration Department which has been issued in exercise of power conferred by Article 309 of the Constitution of India and with previous approval of the Central Government under proviso to sub-section (6) of Section 81 of the Bombay Reorganisation Act, 1960, particularly Rule (3) `General' which provides that every Government servant shall at all times (i) maintain absolute integrity.

3. In support of the aforesaid contention, the learned counsel has relied on the following decisions:

3.1 M/S. SIR SHADI LAL SUGAR AND GENERAL MILLS LTD. AND ANOTHER VS. COMMISSIONER OF INCOME TAX reported in (1987) 4 SCC 722. In this case at paras 11 and 13 the Hon'ble Supreme Court has observed as under:

"Para 11 - The High Court reiterated that the onus of proving concealment was on the revenue because the proceedings for penalty were penal in character. In that view of the matter the High Court was of the opinion that so far as Rs. 48,500/- was concerned it was not proved that there was any deliberate concealment. So far as the other two amounts of Rs. 67,500/- and Rs. 21,700/- were concerned, it was contended that the High Court noted the history of the order of the Inspecting Assistant Commissioner and the circumstances of the case and the High Court was of the view that the Tribunal had not at all considered the fact that the value of the shortage was only Rs. 26,429/-. According to the High Court, the Tribunal had brushed aside

the fact that the assessee had agreed to the addition of this amount. According to the High Court, the Tribunal had not set aside the finding of the Inspecting Assistant Commissioner that the assessee surrendered the amount of Rs. 67,500/when it was faced with facts which clearly established concealment. The assessee according to the Inspecting Assistant Commissioner has surrendered the amount only after the Income Tax Officer had conclusive evidence in his possession that the amount represented its income. In other words, what the High Court sought to state was that acceptance by the assessee was material to give proper weight to judge the criminality of the action which according to the High Court was not given. The High Court highlighted that so far as Rs. 67,500/- was concerned only on being faced with facts from which there could possibly be no escape fro the inference that the amount represented his income, that the assessee agreed to its inclusion. The High Court was of the view that the Tribunal was in error in brushing aside consideration of these aspects while considering the question of concealment.

Para 13 - So far as whether there was justification for the answer given to the reframed third question or was proper or not has to be judged on the basis as to how far the High Court in a reference could interfere with a finding of fact and transfer the same into a question of law on the ground that there has been non-consideration of all relevant facts. The low on this point is quite settled."

3.2 The learned counsel for the petitioner has also relied on the decision of the Privy Council in the case of EDWARDS (INSPECTOR OF TAXES VS. BAIRSTOW AND ANOTHER reported in 1956 Appeal Cases at page 14 (HL) on page No. 36 it is observed thus:

"I do not think that inferences drawn from other facts are incapable of being themselves findings of fact, although there is value in the distinction between primary facts and inferences drawn fro the. When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in

point of law. But, without any such misconception appearing ex facie, it ay be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test. For my part, I prefer the last of the three, since I think that is is rather misleading to speak or there being no evidence to support a conclusion when in cases such as these many of the facts are likely to be neutral in themselves, and only to take their colour from the combination of circumstances in which they are fond to occur."

3.3 The learned counsel for the petitioner submitted that the aforesaid decision is followed in MCLEOD & CO. VS. SIXTH INDUSTRIAL TRIBUNAL reported in AIR 1958 CALCUTTA 273 where Mr. Justice P.B. Mukharji (as he was then) of Calcutta High Court has observed at para 13 on 276 thus:

"This decision of the House of Lords was given in proceedings on appeal and not in certiorari, but the importance of the classical observations of Lord Radcliffe lies in the distinction between `primary' facts and `inferences' drawn from them and in laying down when the latter are questions of law although expressed in three seemingly different expressions in jurisprudence on this point, namely (i) no evidence to support the determination (ii) evidence is inconsistent with the determination (iii) the true and only reasonable conclusion contradicts the determination and the learned Lord's preference for the third expression as being most appropriate."

3.4 The learned counsel for the petitioner has also

relied on the authoritative book of Administrative Law, Fifth Edition by Prof. H.W.R. Wade wherein on page 287 under the heading "findings, evidence and jurisdiction" the learned author has discussed finding of fact-no evidence principle. According to him this principle has been discussed and followed by the Division Bench of this Court in the case of SIDDHARTH MOHANLAL SHARMA VS. SOUTH GUJARAT UNIVERSITY reported in 1982(1) GLR 233 for which I am going to make a reference afterwards. He has further stated that the said law is still a good law and Prof. Wade in his Eighth Edition 2000 on page 278 under the heading "findings, evidence and jurisdiction" and under the heading "The no evidence rule" stated as under:-

"Findings of fact are traditionally the domain where a deciding authority or tribunal is master in its own house. Provided only that it stays within its jurisdiction, its findings are in general exempt from review by the courts, which will in any case respect the decision of the body that saw and heard the witnesses or took evidence directly. Just as the courts look jealously on decisions by other bodies on matters of law, so they look indulgently on their decisions on matters of fact.

But the limit of this indulgence is reached where findings are based on no satisfactory evidence. It is one thing to weigh conflicting evidence which might justify a conclusion either way, or to evaluate evidence wrongly (See: R.V. Criminal Injuries Compensation Board 1997 SLT 291). It is another thing altogether to make insupportable findings. This is an abuse of power and may cause grave injustice. At his point, therefore, the court is disposed to intervene.

`No evidence' does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding; (see: Allinson V. General Medical Council (1894) 1 QB 750 at 760) or where, in other words, no tribunal could reasonably reach than conclusion on that evidence.(See: R.V. Roberts (1908) 1 KB 407 at 423) This ` no evidence' principle clearly has something in common with the principle that perverse or unreasonable action is unauthorised and ultra vires (see: below p. 364). It also

has some affinity with the substantial evidence rule of American law, which requires that findings be supported by substantial evidence on the record as a whole (See: Administrative Procedure Act (USA 1946), s. 10(e)). In the United States this rule has virtually eliminated the need to inquire whether facts are jurisdictional, since the same test is applied whether they are so or not. English law has not gone so far, since it retains the strict test for jurisdictional fact, but allows a margin of error for other dealings which have evidential support."

3.5 The learned counsel for the petitioner has also relied on the Division Bench judgement of this court in the case of SIDDHARTH MOHANLAL SHARA VS. SOUTH GUJARAT UNIVERSITY (supra). In this case on pages 242-243 the court has held at para 18 thus:

"Natural justice likewise is sanctified constitutionally in the great equalising principle enunciated in Art. 14, and therefore, the executive action must meet the requirements of rules of natural justice. Natural justice, it has been said, is only `fair play in action'. When, therefore, a university authority in the exercise of its disciplinary power, holds proceedings for infliction of penalty for misconduct upon one of its errant students, it is its duty to act fairly in matters, substantive and procedural. Certiorari will issue to quash those proceedings if it is found that the authority acted unreasonably or unfairly in the circumstances of the case.

3.6 The Division Bench of this court after relying on a passage from Administrative Law by Prof. Wade in connection with "no evidence" further observed in para 20 on page 243 as under:

"The learned Author has pointed out that the `no evidence' rule has some affinity with the substantial evidence rule of American law which, as explained by Bernard Schwartz in his treatise or Administrative Law, 1976 Edition, at page 595, means, `such evidence as might lead a reasonable person to make a finding.' In other words, according to the learned Author "The evidence in support of a fact-finding is substantial when from it an inference of existence of the fact may

be drawn reasonably."

3.7 The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION VS. K.S. GANDHI AND OTHERS reported in (1991) 2 SCC 716 in which on page 748 at para 37 the Hon'ble Supreme Court was pleased to observe thus:

"It is thus well settled law that strict rules of the Evidence Act and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a

strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

4. Mr. A.D. Oza, learned G.P. with Ms. Shraddha Trivedi, learned A.G.P. for the respondents. He has relied on the affidavit of Mr. A.G. Shaikh, Dy. Secretary, dated 29.10.2001. The learned G.P. after relying on the affidavit and the record of case, made the following submissions:

4.1 The learned counsel submitted that the Government has issued charge-sheet dated 20.2.1979 which contained serious charges against the petitioner. The petitioner replied to the said charges by his letter dated 15.5.1979. Thereafter, the Inquiry Officer prepared report dated 31.3.1980. The petitioner replied to the said inquiry report by his reply dated 27.9.1980. After considering all relevant documents, inquiry report and final defence statement, the charges against the petitioner were found to be proved and defence statement being found not worth accepting, the order dated 22.10.1982 came to be filed. The said order has been passed after following necessary and required procedure laid down in Rule 9 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 and after taking into consideration all relevant material and documents produced and after affording sufficient and adequate opportunity to the petitioner to defense his case. The State Government on finding the petitioner guilty, concluded to dismiss him from the Government Service vide order dated 22.10.1982. Hence the impugned order is just, proper and in accordance with law and requires no interference by this court.

4.2 The order of dismissal passed against the present petitioner is passed after holding a full-fledged inquiry as envisaged by Rule 9 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. He submitted that the petitioner has been charged with serious charges of possessing assets disproportionate to the known sources of income in the chargesheet dated 20.2.1979 which is produced at Annexure-A on page 15.

4.3 It is submitted that though the petitioner had made allegation of mala fide against one Mr. Patel, he has not been joined as party. Thus since the person against whom mala fides are alleged is not joined as

party, the petition is not maintainable and requires to be rejected.

4.4 It was further submitted that it is crystal clear from the lengthy and elaborate inquiry proceedings that the charges against the petitioner are proved and therefore the same would attract provisions of Rule 3(1) of the Gujarat Civil Services Conduct Rules, 1971 i.e. to maintain absolute integrity.

4.5 It was further submitted that the Inquiry Officer has passed the order after considering the relevant material and after affording an opportunity of being heard to the petitioner and there is no mistake apparent on the face of the record. Therefore this court may not interfere with the findings of the Inquiry Officer under Articles 226/227 of the Constitution of India.

4.6 It was further submitted that from the bulky departmental proceedings, it is crystal clear that the Inquiry Officer, after considering the evidence adduced by the petitioner, reached the subjective satisfaction and arrived at a conclusion that the charges levelled against the petitioner are established in absence of lack of sufficient evidence and non-production of necessary documents in support of defence of the petitioner. The finding Inquiry Officer is just, legal and proper and is given after careful and due consideration of evidence by applying mind. Hence this petition requires to be dismissed.

4.7 It was further submitted that in this case in respect of the so-called charges the petitioner was first issued chargesheet at Annexure-A. The petitioner replied to the said charges at Annexure-B.

4.8 The learned counsel for the respondent further submitted that the petitioner has not produced any cogent and convincing proof or evidence regarding the allegations made in the petition against the officer of the respondents and regarding the incidents referred to in the petition. It is submitted that the incident in question has no direct nexus or bearing on the charges levelled against the petitioner and punishment is inflicted after following due process of law by holding regular departmental inquiry.

4.9 It was further submitted that the conduct of witness Meghjibhai Karsandas Kamlia is suspicious and unnatural and is difficult to be accepted true. The amounts given are gift articles are not shown or

accounted in any income tax returns or other record. Same is the case with witness Harishbhai Meghjibhai Kamlia. Statements of both the witnesses are inconsistent and are not supported by any cogent or convincing evidence on record. It was further stated that it is not believable that father would give large amounts or valuable gifts or gold weighing in tolas only to the wife of the petitioner and not to his other daughters because for him all the daughters would be equal. It is further submitted that the Inquiry Officer was not satisfied with the account books and the explanation given. The Inquiry Officer has earlier mentioned in his report dated 31.3.1980 that the accounts produced for the period from 12.9.1970 to 30.10.1970 are not considerable and Inquiry Officer has rightly observed and concluded accordingly.

4.10 It was further submitted that the dismissal order is a speaking order and is also reasoned order and therefore it is not correct to say that the order of dismissal was blind adoption of the report of the Inquiry Officer. It is also not correct to say that the report of the Inquiry Officer suffers from illegalities or serious infirmities rendering the impugned order of dismissal as illegal, unjust and improper.

4.11 It was further submitted that even during inquiry proceedings, the petitioner or his relatives were not able to produce satisfactory evidence for gift tax paid for gifts received by the petitioner or his spouse. The petitioner being Class I officer is expected to know the relevant provisions of the Gift Tax Act. Non-production of such evidence itself would go to show that such gifts and articles have been procured by indulging in the activities as charged in the charge-sheet. Under the circumstances, the petition requires to be dismissed with costs.

4.12 The learned counsel for the respondent has relied on the decision of the Hon'ble Supreme Court in the case HIGH COURT OF JUDICATURE AT BOMBAY VS. UDAYSINGH reported in AIR 1997 SC 2286 in which on page 2290 at para 13 the Hon'ble Apex Court has held thus:

"Under these circumstances, the question arises: whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence

at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is; what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgement depends upon the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer we think that imposition of penalty of dismissal from service is well justified. It does not warrant interference."

4.13 The learned counsel for the respondent further placed reliance on the decision of the Hon'ble Supreme Court in the case of B.C. CHATURVEDI VS. UNION OF INDIA AND OTHERS reported in (1995) 6 SCC 749 in which on page 760 at para the Hon'ble Court has held as under:

"It is, therefore, difficult to go into the question whether the appellant was in possession of property disproportionate to the known sources of his income. The findings of the disciplinary authority and that of the Enquiry Officer are based on evidence collected during the inquiry. They reached the findings that the appellant was in possession of Rs. 30,000/- in excess of his satisfactorily accounted for assets from his known sources of income. The alleged gifts to his wife as stridhana and to his children on their birthdays were disbelieved. It is within the exclusive domain of the disciplinary authority to reach that conclusion. There is evidence in that behalf."

On page 762 at para 18 it is further observed by the Hon'ble Court thus:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while

exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

4.14 The learned counsel for the respondent has relied on the decision of the Hon'ble Supreme Court in the case of VIJAY KUMAR NIGAM VS. STATE OF M.P. (1996) 11 SCC 599 in which at para 3 the Hon'ble Court has held as under:

"Two grounds have been pressed for consideration in the High Court and reiterated in the appeal. The main ground was that the report of the preliminary enquiry conducted against him before initiating departmental enquiry, was not supplied to him and, therefore, it is violative of the principle of natural justice. The High Court has rejected the contention and, in our view, quite rightly. The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. The High Court also found as a fact that all the statements of persons that formed the basis for the report, recorded during the preliminary enquiry were supplied to the delinquent officer. It was then contended that one of the constables , namely, Palairam was a co-accused who was also charged along with the appellant and his evidence was taken into consideration in deciding against the appellant which is inadmissible evidence. In a departmental enquiry, the question whether or not any delinquent officer is a co-accused with the other does not arise. That would arise in a prosecution laid for an officer under the IPC or Prevention of Corruption Act, 1947. The evidence recorded in the departmental enquiry stricto sensu is not evidence as per the provisions of the Evidence Act, 1872. Therefore, the statement

of Palairam also formed part of the record which could be taken into account in adjudging the misconduct against the appellant. The Inspector General of Police had stated that even if that evidence was excluded from consideration, there was other sufficient evidence to come to the conclusion that the appellant had taken illegal gratification from the organiser of gambling. Thus, the High Court has not committed any error of law in dismissing the writ petition of the appellant."

4.15 It is further submitted that the conclusion arrived at is on merits and after considering all relevant aspects of the matter and therefore it is not correct to say that to reach such a conclusion is to commit volta face. It was submitted that even during the inquiry proceedings the petitioner or his relatives were not able to produce satisfactory evidence for gift tax paid for gifts received by the petitioner or his spouse. The petitioner being Class I officer is expected to know the relevant provisions of Gift Tax Act. Non-production of such evidence would show that such gifts and articles have been procured by indulging in activities as charged in the charge-sheet.

MY CONCLUSION:

5. I have considered the submissions of the learned counsel for the petitioner and also the judgement of the Hon'ble Apex court in the case of M/s. Mehta Parikh & Co. (supra), M/s. Sir Shadi Lal Sugar and General Mills Ltd. (supra), State of U.P. and Others (supra), Edwards (Inspector of Taxes Vs. Bairstow and Another) (supra), Mcleod & Co. (supra), a passage from Prof. Wade's Administrative Law on "no evidence", Division Bench judgement of this court in SIDDHARTH MOHANLAL SHARMA (supra) and other judgements cited by the learned counsel for the petitioner in this behalf. I have also gone through the affidavit in reply filed on behalf of the respondent in this behalf. I have also gone through the judgement of the Hon'ble Apex Court in the case of B.C. Chaturvedi (supra) and the judgement in High Court of Judicature at Bombay Vs. Udaysingh (supra), Vijaykumar Nigam (supra).

5.1 In my view in the enquiry proceedings witnesses examined by the petitioner are not independent witnesses of having no interest. They are very interested witnesses and are very close relatives and in-laws of the petitioner. Hence the Inquiry Officer has rightly

examined the version of those witnesses with very care and caution and has righly not accepted the same as unimpeachable evidence in the absence of concrete documentary evidence. In my view the Inquiry Officer has objectively appreciated the evidence available and reached a specific finding that `no corroborative' evidence which would tilt the balance in favour of the petitioner regarding the gifts is received report of Inquiry Officer dated 31.3.1980. In my view there is ample, sufficient and cogent evidence against the petitioner. There is also circumstantial evidence against the petitioner. The version of gifts, its time period and time period of accumulation are quite different and hence it is difficult to believe the evidence of either the petitioner or of witnesses who are highly interested and close relatives of the petitioner. In my view the Inquiry Officer has rightly passed the order after considering the relevant materials in this behalf.

5.2 In my view the subjective satisfaction of the Inquiry Officer, in absence of cogent, convincing and independent evidence by the petitioner, cannot be vitiated. The Inquiry Officer has, after considering all relevant aspects and the circumstances as well as evidence led, passed the order of dismissal which is a speaking order on 22.10.1982 and the same does not require interference by this court.

5.3 In my view the scope of judicial review qua the conclusion reached in the departmental proceedings in exercise of powers under Article 226 of the Constitution of India is very limited. The findings arrived at in the departmental inquiry after appreciating the evidence are findings of fact which cannot be reappreciated in exercise of powers under Article 226 of the Constitution of India. In doing so would amount to reappreciation of evidence which is not permitted. The court has to see whether the findings reached are based on evidence/reasonable evidence and the court cannot reappreciate evidence and substitute its own findings.

5.4 In my view the order of dismissal passed against the petitioner is passed after following the necessary and required procedure laid down in Rule 9 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 and after taking into consideration all relevant material and documents produced and after affording sufficient opportunity to the petitioner to defend his case. In my view the petitioner was a high ranking Class I Government officer and as per Rule 3 of Gujarat Civil Services

(Conduct) Rules, 1971 he must maintain absolute integrity whereas he had property and income disproportionate to the known source of his income which shows that the petitioner has received illegal gratification. This fact has been considered by the Disciplinary Authority and the Disciplinary Authority has come to the conclusion that the petitioner has accumulated assets disproportionate to his known source of income. Therefore, when the authority has used its discretionary power, this court cannot exercise its extraordinary jurisdiction under Article 226/227 of the Constitution of India. In view of the same, the view taken by the authority of dismissing the prayer of the petition is legal and valid and it cannot be said that this is a case of no evidence. In my view this court has extremely limited jurisdiction and it will not be possible for this court to interfere with the order of dismissal. The petition is therefore required to be rejected.

5.5 In my view it is clear from lengthy and elaborate inquiry proceedings that the charges against the petitioner are proved and therefore the same would attract provisions of Rule 3(1) of the Gujarat Civil Services Conduct Rules, 1971 i.e. to maintain absolute integrity.

5.6 In my view the contention of the learned counsel for the petitioner that the inquiry is of no evidence is not correct because after considering all material and evidences the government has passed the order of dismissal. In my view there is ample, sufficient and cogent evidence against the petitioner. In my view the order of dismissal is a reasoned order because it gives all the reasoning by which the petitioner has been dismissed. The Inquiry Officer and the authority has taken into consideration all the relevant material and they have not taken any irrelevant material into consideration. Though the petitioner has alleged mala fide but ultimately there is no evidence produced by the petitioner and therefore I did not consider the allegation of mala fide by the petitioner in this behalf. I have considered the evidences of the witnesses which have been produced by the petitioner. In my view either the petitioner or his relatives were not able to produce satisfactory evidence for accumulation of wealth and it is disproportionate to the known source of income. In my view the scope of judicial review regarding the conclusion reached in departmental proceedings in exercise of powers under Article 226 of the Constitution of India is extremely limited and the authority has used his discretion. In view of this, I do not want to

interfere with the said discretionary power in this behalf.

6. In the result, the petition is rejected. The order dated 22.10.1982 passed by the Executive Engineer dismissing the petitioner from service is legal and valid. I see no infirmities in the passing of the said order. The order is upheld. Rule is discharged. No order as to costs.

(K.M. MEHTA, J)

(pkn)